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No. ~~1~~  
Date **OCT 24 1978**  
Fee \$1.00.....

ICC Washington, D. C.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION  
79 South Main Street  
Salt Lake City, Utah 84111

9792-B

RECORDATION NO. .... Filed 1428

**OCT 24 1978 12 18 PM**

**INTERSTATE COMMERCE COMMISSION**

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir:

October 24, 1978

9792-A  
RECORDATION NO. .... Filed 1428

**OCT 24 1978 12 18 PM**

**INTERSTATE COMMERCE COMMISSION**

Herewith for recordation pursuant to section 20c of the Interstate Commerce Act are counterparts of each of the following:

Equipment Lease dated as of September 1, 1978, between Kennecott Copper Corporation, lessee, and First Security Bank of Utah, National Association, and Thomas C. Cuthbert, as trustees, lessor.

Collateral Assignment of Lease dated as of September 1, 1978 (relating to the aforesaid Equipment Lease), between First Security Bank of Utah, National Association, as trustees, assignor, and United States Trust Company of New York, as trustee, assignee.

Equipment Trust Agreement dated as of September 1, 1978, between First Security Bank of Utah, National Association, and Thomas C. Cuthbert, as trustees, grantor, and United States Trust Company of New York, as trustee, grantee.

The addresses of the parties to these documents are:

Kennecott Copper Corporation, 161 East 42nd Street, New York, New York 10017.

First Security Bank of Utah, National Association, and Thomas C. Cuthbert, as trustees, c/o First Security Bank of Utah, N.A., 79 South Main Street, Salt Lake City, Utah 84111.

United States Trust Company of New York, as trustee, 130 John Street, New York, New York 10038.

The equipment covered by the above-described documents consists of 22 diesel-electric locomotives, bearing the road numbers of Kennecott Copper Corporation 101 through 107, 120, 121, 122, 701, 704 and 790 through 799, and bearing the legend "Ownership Subject to a Security Agreement Filed under Section 20c the Interstate Commerce Act."

*D. McConnell*

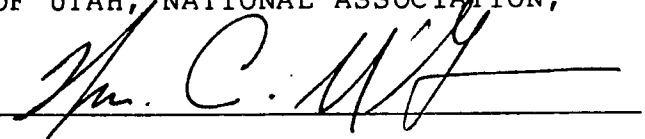
*Charles [Signature]*

Herewith is a check for \$100 for the required fee. Please accept for recordation the enclosed documents, and return one copy, stamped with the recordation number, to the delivering messenger for transmittal to the undersigned.

Very truly yours,

FIRST SECURITY BANK OF UTAH, NATIONAL  
ASSOCIATION, and THOMAS C. CUTHBERT,  
as trustees, by FIRST SECURITY BANK  
OF UTAH, NATIONAL ASSOCIATION,

By

A handwritten signature in dark ink, appearing to read "Th. C. Cuthbert", is written over a horizontal line.

RECORDATION NO. 9792-<sup>B</sup> Filed 1428

OCT 21 1978 12 15 PM  
INTERSTATE COMMERCE COMMISSION

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EQUIPMENT TRUST AGREEMENT

Dated as of September 1, 1978

between

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION  
and THOMAS C. CUTHBERT,  
not in their individual capacities, but solely  
as trustees under a Trust Agreement  
dated as of September 1, 1978, among them and  
Crocker National Bank and First Security Bank of Utah, National  
Association,

and

UNITED STATES TRUST COMPANY OF NEW YORK

EQUIPMENT TRUST NO. 2 OF 1978  
SECURED BY LEASE OBLIGATIONS OF  
KENNECOTT COPPER CORPORATION

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## EQUIPMENT TRUST AGREEMENT

THIS EQUIPMENT TRUST AGREEMENT dated as of September 1, 1978, between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association, and THOMAS C. CUTHBERT, not in their individual capacities but solely as trustees under a Trust Agreement dated as of the date hereof (said trustees together with their respective successors and assigns under said Trust Agreement being hereinafter called the Corporate Trustee and the Individual Trustee, respectively and together the Owner Trustees, and such Trust Agreement being called the Trust Agreement) among them and Crocker National Bank and First Security Bank of Utah, National Association (each hereinafter called a Beneficial Owner), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation (hereinafter together with its successors and assigns hereunder being called the Trustee);

### W I T N E S S E T H:

WHEREAS the Owner Trustees, acting on behalf of the Beneficial Owners, will purchase the equipment described in Annex A hereto (such equipment so described as shall be subject to this Agreement from time to time being hereinafter called the Equipment);

WHEREAS the Owner Trustees will lease the Equipment to Kennecott Copper Corporation (hereinafter called the Lessee) pursuant to an Equipment Lease dated as of the date hereof (hereinafter called the Lease);

WHEREAS, in order to finance a portion of the purchase price of the Equipment, there are to be issued equipment trust certificates substantially in the form of Annex B hereto (hereinafter called the Certificates) pursuant to the terms hereof and of a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among the Lessee, the Beneficial Owners and the other parties therein named;

WHEREAS the Owner Trustees agree to make payments to the Trustee in amounts sufficient to enable the Trustee to pay the principal of and interest on the Certificates, the liability of the Owner Trustees being limited to the rentals due and to become due under the Lease and to the income and proceeds from the Equipment;

WHEREAS the interest of the Owner Trustees in the Equipment and in the Lease is to be assigned and granted to and retained by the Trustee in trust for the holders of the Certificates as security for the obligations of the Owner Trustee hereunder, in accordance with the terms hereof and of the Collateral Assignment of Lease dated the date hereof (hereinafter called the Lease Assignment); and

WHEREAS the trust created hereby shall be known as EQUIPMENT TRUST NO. 2 OF 1978, SECURED BY LEASE OBLIGATIONS OF KENNECOTT COPPER CORPORATION.

NOW, THEREFORE, in consideration and of the mutual covenants herein contained, the parties hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. Definitions. The following terms shall have the following meanings for all purposes of this Agreement and the Certificates and shall include the plural as well as the singular:

Authorized Officer shall mean any officer authorized by the corporate charter, by-laws or board of directors to perform the specific act or duty or to sign the specific document in question.

Casualty Occurrence shall mean the loss, destruction, unfitness for use, requisition, condemnation or other event which shall cause the Lease to be terminated in respect of any unit of the Equipment and require the Lessee to make payment in respect thereof, whether or not such event shall be called a "Casualty Occurrence" in the Lease.

Casualty Value shall mean any amounts payable under the Lease due to a Casualty Occurrence, whether or not such amount shall be called the "Casualty Value" therein.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would become an Event of Default.

Directive shall mean an instrument in writing executed in one or more counterparts by the registered owners of the Certificates, or their lawful

attorneys-in-fact, representing not less than 51% of the aggregate unpaid principal balance of Certificates then outstanding, directing the Trustee to take or refrain from taking the action specified therein or otherwise advising the Trustee or others; provided, however, that in determining whether the registered owners of the requisite principal amount of Certificates outstanding have given any Directive under this Agreement, Certificates owned by a Beneficial Owner, the Corporate Trustee, the Individual Trustee, the Trustee, the Lessee or any entity owning or controlling, directly or indirectly, 50% of the voting shares of any thereof or controlled by or under common control with any thereof shall be disregarded and deemed not to be outstanding unless all of the Certificates are as of the date of determination owned by any one or more of such entities, except that, in determining whether the Trustee shall be protected in relying upon any such Directive, only Certificates which the Trustee knows to be so owned shall be disregarded.

Estate shall mean all of the properties, claims, rights and things granted or assigned to the Trustee pursuant to section 2.1 hereof.

Event of Default shall have the meaning established in section 7.1.

Lessor's Cost with respect to the Equipment, shall mean the cost thereof as evidenced by an invoice of the vendor thereof or such other evidence of the cost as shall be stipulated in the Lease in connection with payment for the Equipment by the Trustee.

Overdue Rate shall mean the rate of interest specified in the form of Certificate to be applied to payments past due.

Principal Office of the Trustee shall mean the Corporate Trust and Agency Division of the Trustee at 130 John Street, New York, New York 10038, or such other office or agency of the Trustee as the Trustee shall have designated by notice to the Owner Trustees, each Beneficial Owner, the Lessee and the registered owners of the Certificates pursuant to the provisions of section 10.2.

Termination Value shall mean any amounts payable under the Lease due to the voluntary termination of the

Lease by the Lessee, whether or not such amounts shall be called the "Termination Value" therein.

Trust Estate shall mean the estate created by the Trust Agreement.

## ARTICLE II

### SECURITY

SECTION 2.1. Grant of Security Interests. As security for the due and punctual payment of the principal of and premium, if any, and interest on the Certificates and the performance and observance by the Owner Trustees and each Beneficial Owner of all the covenants made by or on their behalf and the conditions contained in this Agreement and in the Participation Agreement, the Owner Trustees hereby grant to the Trustee a security interest in all of the Owner Trustees' right, title and interest in and to the Equipment, when and as the Equipment or any part thereof shall become subject to the Lease, and all cash and non-cash proceeds therefrom; and hereby assign to the Trustee all of the Owner Trustees' right, title and interest in and to the Lease and all payments, including, without limitation, all payments of rent due or to become due thereunder, but excluding amounts payable to the Owner Trustees as indemnity for the Owner Trustees' or any Beneficial Owner's losses under sections 8, 13 and 15 of the Lease. J/M  
9(9)

SECTION 2.2. Filing of Financing Statements and Continuation Statements.

This Agreement or a counterpart or copy hereof or other evidence hereof may be filed or recorded in any public office as may be necessary or appropriate to protect the interests of the holders of the Certificates in the Estate. The Owner Trustees and the Trustee will execute and file such statements and instruments and such continuation statements with respect to statements and instruments previously filed relating to the interests created or assigned under this Agreement in the Estate as may be specified from time to time in written instructions of the Trustee or any registered owner of a Certificate (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such statement or instrument or such continuation statement so to be filed).

SECTION 2.3. Power of Attorney. The Owner Trustees hereby appoint the Trustee the Owner Trustees' attorney, irrevocably, with full power of substitution, to collect all payments due and to become

due under or arising out of the Lease, to enforce compliance by the Lessee with all the terms and provisions of the Lease, and to take any action or institute any proceedings which the Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Trustees in the Estate.

SECTION 2.4. Payment. The Owner Trustees agree to direct the Lessee to make all payments to be made by it under the Lease directly to the Trustee or in accordance with the Trustee's instructions until such time as the obligations of the Owner Trustees hereunder and under the Certificates have been discharged. The Owner Trustees agree that should either of them receive any such payments directed to be made to the Trustee or any proceeds for or with respect to the Estate or as the result of the sale or other disposition thereof, they will promptly forward such payments to the Trustee or in accordance with the Trustee's instructions; provided, however, that the Owner Trustees or either of them shall not be required to forward the amount of any such payment which exceeds the liability of the Owner Trustees hereunder, as limited by section 6.2. The Trustee agrees to apply amounts from time to time received by it (from the Lessee, the Owner Trustee or otherwise) with respect to the Lease or the Equipment to the payment of the principal of and interest on the Certificates then due and to the payment of any other amounts then due and payable under this Agreement and, if no event of default hereunder shall have occurred and be continuing, to pay any balance to the Owner Trustees.

SECTION 2.5. Release of Security Interests. After all payments due and to become due hereunder shall have been made and the Owner Trustees shall have performed all of their obligations hereunder, the security interests and all other estate and rights therein granted by this Agreement shall cease and become null and void and all of the property, rights and interests granted as security for the Certificates shall revert to and revest in the Owner Trustees without any other act or formality whatsoever.

Upon receiving evidence satisfactory to it that the Owner Trustees have fully performed and observed their covenants and obligations contained in this Agreement the Trustee shall, at the request and at the expense of the Owner Trustees, execute and deliver to the Owner Trustees such termination statements, releases or other instruments as shall be necessary and appropriate to evidence the satisfaction and discharge of this Agreement and the security interests hereby created.

### ARTICLE III

#### ISSUE, EXECUTION, AUTHENTICATION AND FORM OF CERTIFICATES

SECTION 3.1. Maximum Authorized Issue. There are authorized to be issued and outstanding at any time hereunder Certificates in aggregate principal amount not to exceed the maximum authorized issue amount set forth in the form of Certificate in Annex B hereto.

SECTION 3.2. Issuance of Certificates; Proceeds. The Trustee shall issue and deliver, from time to time in accordance with the Participation Agreement and subject to the conditions thereof, Certificates substantially in the form set forth in Annex B hereto in the aggregate principal amount sold under and pursuant to the terms of the Participation Agreement. The proceeds of such sale shall forthwith be deposited with the Trustee.

In accordance with the terms of the Participation Agreement and subject to the conditions set forth therein, the Trustee, on the date or dates specified in the Participation Agreement, shall pay to the vendor or vendors of the Equipment an amount equal to that portion of the Lessor's Cost of the Equipment as shall be specified in the Participation Agreement to be paid out of the proceeds of the issuance of the Certificates on such date.

SECTION 3.3. Characteristics of Certificates. Certificates shall bear interest at such rate, be payable as to principal, premium, if any, and interest on such date or dates, and shall contain such other terms and provisions as shall be established in the Participation Agreement and shall be substantially in the form set forth in Annex B hereto.

Except as otherwise specifically provided in the Participation Agreement, all interest payable on the Certificates shall be computed on the basis of a year of twelve months of 30 days each. In the event that the date for payment of principal of or interest on any Certificate is not a business day, then such payment shall be made on the next succeeding business day with the same effect as if made on the nominal payment date and no interest shall be paid in respect of such delay.

The Certificates (i) shall be registered, as to both principal and interest, in the names of the holders; (ii) shall be registrable as to transfer in whole or in part upon presentation and surrender thereof for registration of transfer at the Principal Office of the Trustee; (iii) shall be dated as of the date of issue, or if issued in exchange for or upon the transfer of another Certificate or Certificates bearing unpaid interest from an earlier date, dated as

of such earlier date; (iv) shall entitle the holders to interest and installments of principal from the date thereof; and (v) shall be exchangeable at the Principal Office of the Trustee for an equal aggregate principal amount of Certificates of like tenor.

All Certificates shall rank on a parity with each other Certificate and shall as to each other be secured equally and ratably by this Agreement, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

In the event that any unit of the Equipment shall suffer a Casualty Occurrence or the Lease shall be terminated by the Lessee in accordance with its terms, Certificates shall be subject to prepayment in whole or in part as more fully set forth in Article V hereof but not otherwise. In the event of any prepayment of the principal amount of any Certificate pursuant to this Agreement, the amount of each payment of such Certificate becoming due after application of such prepayment shall, to the extent appropriate, be adjusted so that the principal paid on each date for an installment of principal shall bear the same proportion to the original amount payable on such date as the total unpaid balance bears to the original balance unpaid on such date but for such prepayment and that, upon the due payment of all payments thereafter, the entire unpaid principal amount of and interest on such Certificate shall have been paid in full.

SECTION 3.4. Home Office Payment. The principal of, premium, if any, and interest on each Certificate shall be payable at the principal office of the Trustee in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the foregoing or any provision in any Certificate to the contrary, if so requested by the registered owner of any Certificate by written notice to the Trustee, all amounts (other than the final payment) payable to such registered owner may be paid either (i) by crediting the amount to be distributed to such registered owner to an account maintained by such registered owner with the Trustee or by transferring such amount by wire to such other bank in the United States, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such registered owner maintained at such bank, any such credit or transfer pursuant to this clause (i) to be in immediately available funds, or (ii) by mailing a check payable in clearing house funds local to the city where the principal office of the Trustee is situated to such registered owner at such address as such registered owner shall have specified in such notice, in either case without any presentment or surrender of such Note. In the case of any such registered owner which is an original party to the Participation Agreement, the Participation Agreement shall constitute such written notice. Final payment of any such Certificate shall be made only against surrender

of such Certificate to the Trustee at the Principal Office of the Trustee.

SECTION 3.5. Authentication. Only such Certificates as shall bear thereon a certificate of authentication manually executed by the Trustee shall be entitled to the benefits of this Agreement or be valid or obligatory for any purpose. Such certificate of authentication of the Trustee upon any Certificate executed by the Owner Trustees shall be conclusive evidence that the Certificate so authenticated was duly issued, authenticated and delivered under this Agreement.

SECTION 3.6. Execution of Certificates. The Certificates shall be executed on behalf of the Trustee by one of the Authorized Officers of the Trustee. Such signature may be a manual or facsimile signature and may be printed or otherwise reproduced on the Certificates. In case any Authorized Officer of the Trustee, who shall have executed any of the Certificates either manually or by facsimile signature, shall cease to be such an Authorized Officer before the Certificates so executed shall have been authenticated by the Trustee and delivered or disposed of by the Trustee, such Certificates nevertheless may be authenticated and delivered or disposed of as though the person who executed such Certificates had not ceased to be such an Authorized Officer of the Trustee; and any Certificate may be executed on behalf of the Trustee by such person as, at the actual time of execution of such Note, shall be an Authorized Officer of the Trustee, although at the date of such Certificate any such person was not such an Authorized Officer.

SECTION 3.7. Limitation on Source of Payments. All payments to be made by the Trustees under this Agreement on the Certificates shall be made only out of payments received by the Trustee hereunder and applicable to such payment under the provisions hereof, which shall be limited to income and proceeds from the Estate, as more fully set forth in section 6.2 hereof. Each registered owner or other holder of a Note, by its acceptance of such Note, agrees that it will look solely to the income and proceeds from the Estate to the extent available for distribution to such registered owner as herein provided and that the Trustee shall not be personally liable to such registered owner or other holder of a Certificate for any amounts payable under this Agreement or under such Certificate or, except as provided in section 8.1, for any liability under this Agreement.



## ARTICLE IV

### REGISTRATION, TRANSFER, EXCHANGE, CANCELLATION AND OWNERSHIP OF CERTIFICATES

SECTION 4.1. Register of Certificates. The Trustee shall maintain at the Principal Office of the Trustee a register for the purpose of registration, and registration of transfer and exchange, of Certificates and in which shall be entered the names and addresses of the owners of such Certificates and particulars of the Certificates owned by them, respectively. For these purposes, the Trustee is hereby appointed transfer agent and registrar for the Certificates. No transfer of any Certificate shall be valid unless and until registered on such register.

SECTION 4.2. Inspection of Register of Certificates. The register referred to in section 4.1 of the owners of the Certificates shall at all reasonable times be open for inspection by any registered owner of a Certificate. Upon request by any registered owner of a Certificate, the Trustee shall furnish such registered owner, at the expense of such registered owner, with a list of the names and addresses of all registered owners of Certificates entered on the register kept by the Trustee, indicating the unpaid principal amount and serial number of each Certificate held by such registered owners.

SECTION 4.3. Cancellation of Certificates. All Certificates surrendered to the Trustee for payment, prepayment, or registration of transfer or exchange shall be cancelled by it; and no Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Trustee may destroy cancelled Certificates held by it and deliver a certificate of destruction to the Owner Trustees, or the Trustee may return cancelled Certificates to the Owner Trustees. If the Owner Trustees shall acquire any of the Certificates, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Certificates unless and until the same shall be delivered to the Trustee for cancellation.

SECTION 4.4. Exchange or Transfer of Certificates. A registered owner of a Certificate intending to transfer any Certificate registered in its name or to exchange any of such Certificates for new Certificates may surrender such Certificates at the Principal Office of the Trustee, together with the written request of such registered owner, or of its attorney duly authorized in writing, for the issuance of a new Certificate or Certificates, specifying the authorized denomination or denominations of the same and the name and address of the transferee. Promptly upon receipt by the Trustee of the foregoing and satisfaction of the requirements of this section,

the Trustee shall execute, authenticate and deliver such new Certificate or Certificates, in the principal amount equal to the unpaid principal amount or amounts of such one or more Certificates so surrendered, in such denomination or denominations and registered in the name or names of the transferee specified in the written request.

The Trustee shall not be required to register transfers or exchanges of Certificates on any date fixed for the payment of principal or premium, if any, or interest on the Certificates or during the five business days preceding such date.

The Certificates shall be delivered to registered owners without registration of such Certificates under the Securities Act of 1933, as amended, and qualification of this Agreement under the Trust Agreement Act of 1939, as amended. Prior to any transfer (except any transfer specifically provided in the Participation Agreement) of any Note, in whole or in part, the registered owner thereof shall, if the Trustee shall so request, furnish to the Trustee and the Owner Trustees an opinion of counsel in form satisfactory to the Trustee and the Owner Trustees, to the effect that such transfer of the Certificates is exempt from the registration requirements of the Securities Act of 1933, as amended, and such transfer will not require qualification of this Agreement under the Trust Agreement Act of 1939, as amended. Unless the Trustee and the Owner Trustees shall have received an opinion of counsel satisfactory to the Trustee and the Owner Trustees, to the effect that the same shall not be necessary, each Certificate shall be endorsed with the legend set forth on the form of Certificate in Annex B hereto.

As a further condition of transfer or exchange of any Certificate (except any transfer specifically provided in the Participation Agreement), the registered owner thereof shall reimburse the Trustee and the Owner Trustees for any stamp taxes or governmental charges required to be paid with respect to such transfer or exchange.

SECTION 4.5. Mutilated, Destroyed, Lost or Stolen Certificates. If any Certificate shall become mutilated or shall be destroyed, lost or stolen, the Trustee shall, upon the written request of the registered owner of such Certificate, execute, authenticate and deliver in replacement thereof, a new Certificate, payable in the same original principal amount and dated the same date as the Certificate so mutilated, destroyed, lost or stolen. The Trustee shall make a notation on each new Certificate of the amount of all payments of principal and premium, if any, theretofore made, or the date to which such payments have been made, on the Certificate so mutilated, destroyed, lost or stolen and the date to which interest on such old Certificate has been paid. If the Certificate being replaced has been mutilated, such Certificate shall be delivered to

the Trustee and shall be cancelled by it. If the Certificate being replaced has been destroyed, lost or stolen, the registered owner of such Certificate shall furnish to the Trustee the indemnity agreement of such registered owner and a bond or surety agreement of such registered owner as shall be satisfactory to it to save the Trustee harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Certificate, together with evidence satisfactory to the Trustee of the destruction, loss or theft of such Certificate and of the ownership thereof; provided, however, that if the registered owner of such Certificate is an original party to the Participation Agreement, the written statement of such original party shall be sufficient proof of such destruction, loss or theft and an indemnity agreement of such party signed by a duly authorized officer thereof delivered to the Trustee shall be sufficient security and indemnity.

SECTION 4.6. Ownership of Certificates. The Trustee may deem and treat the registered owner of any Certificate as the absolute owner of such Certificate for the purpose of receiving payment of all amounts payable with respect to such Certificate and for all other purposes, and the Trustee shall not be affected by any notice to the contrary.

The Trustee may, in its discretion, treat the registered owner of any Certificate as the owner thereof without actual production of such Certificate for any purpose hereunder.

The Trustee shall not be bound to take notice of or carry out the execution of any trust in respect of any Certificate, and may transfer the same on the direction of the registered owner thereof, whether named as trustee or otherwise, as though the registered owner were the beneficial owner thereof.

The registered owner of any Certificate shall be entitled to the principal of, premium, if any, and interest on such Certificate free from all equities or rights of set-off or counterclaims of either of the Owner Trustees, the Trustee or any prior registered owner of such Certificate. The receipt by the registered owner of any Certificate of any payment of principal, premium or interest shall be a good discharge to the Trustee for the same and the Trustee shall not be bound to inquire into the title of any registered owner.

## ARTICLE V

### PREPAYMENT

SECTION 5.1. Prepayment as Result of Casualty Occurrence or Termination. In the event that any unit of the Equipment shall suffer a Casualty Occurrence or the Lease shall be terminated by the Lessee in accordance with its terms in respect of any unit of Equipment, the Owner Trustees shall immediately notify the Trustee of such occurrence or pending termination and the Certificates shall be prepaid, on the date for payment of principal of and interest on the Certificates next following such notice, in an amount equal to the unpaid principal amount of the Certificates multiplied by (y) a fraction, the numerator of which shall be the aggregate amount of the Lessor's Cost of the Equipment as to which the Lease is being terminated or which shall have suffered a Casualty Occurrence and the denominator of which shall be the aggregate amount of Lessor's Cost of all Equipment immediately prior to such date. Such amounts of prepayment, together with the premium, if any, payable by reason of the application of the prepayment of principal of such Certificates, shall be distributed to the registered owners of such Certificates outstanding on such date ratably, without priority of one over the other.

## ARTICLE VI

### COVENANTS AND REPRESENTATIONS OF OWNER TRUSTEES; LIMITATION OF LIABILITY

SECTION 6.1. Covenants of Owner Trustees. The Owner Trustees hereby covenant and agree as follows:

(a) the Owner Trustees will duly and punctually pay to the Trustee such amounts as are necessary to enable the Trustee to pay the principal of, premium, if any, and interest on the Certificates in accordance with the terms of such Certificates and this Agreement when such payments shall become due, including, but not limited to, prepayments in respect of Casualty Occurrences and early termination of the Lease;

(b) the Owner Trustees will not directly or indirectly create or suffer to exist any lien, encumbrance, or security interest on or with respect to any of the Estate resulting from the acts of the Owner Trustees or resulting from the nonpayment of any tax except as may

be created by this Agreement or the Lease or resulting from the nonpayment of any such tax which the Lessee has agreed in the Lease to pay or reimburse;

(c) the Owner Trustees will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by Owner Trustees; without the written consent of the Trustee, the Owner Trustees will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee which are intended to satisfy the obligations of the Owner Trustees under this Agreement or to preserve and protect the interest of the Trustee in the Lease and the Equipment, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein, or enter into any agreement or take any action the result of which would be to amend, modify or terminate the Lease or the obligations of the Lessee thereunder;

(d) except as permitted by the Trust Agreement, the Owner Trustees will not sell, assign or transfer their rights under this Agreement or the Lease or transfer the right to possession of any unit of the Equipment;

(e) the Owner Trustees will not without the consent of the Trustee permit the Trust Agreement to be amended or supplemented in any manner which would affect any right of the registered owner of any Certificate or the Trustee; and

(f) the Owner Trustees will promptly notify the Trustee of any Event of Default hereunder or any event which, with the giving of notice or the lapse of time or both, would become such an Event of Default, of which the Owner Trustees or either of them shall have knowledge.

SECTION 6.2. Limitation of Liability. The liability of the Owner Trustees for all payments to be made by them under and pursuant to clause (a) of section 6.1 shall not exceed an amount equal to, and shall be payable only out of, the income and proceeds from the Estate. As used herein the term "income and proceeds from the Estate" shall mean

(a) if an Event of Default shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by the Owner Trustees or the Trustee as assignee of the Owner Trustees at any time after such Event of Default and during the continuance thereof, (i) all rent and any other sums due and to become under the Lease which are subject to the assignment of section 2.1 hereof and (ii) any and all other payments or proceeds received pursuant to the Lease or for or with respect to the Estate as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(b) at any other time only that portion of the amounts referred to in the foregoing clause(a) or otherwise payable to the Owner Trustees pursuant to the Lease as are indefeasibly received by the Owner Trustees or the Trustee as assignee of the Owner Trustees and as shall equal the payments specified in clause (a) of section 6.1 due and payable by the Owner Trustees on the date such amounts so received were required to be paid pursuant to the Lease or as shall equal any other payments (including payments in respect of Casualty Occurrences and early termination of the Lease) then due and payable under this Agreement.

The Trustee agrees that if it obtains a judgment against the Owner Trustees for an amount in excess of the amounts payable by the Owner Trustees pursuant to the limitations set forth in this section, it will, accordingly, limit its execution of such judgment to such amount and it will not bring suit against the Owner Trustees for any sums in addition to the amounts payable by the Owner Trustees pursuant to said limitations (or obtain a judgment, order or decree against the Owner Trustees for any relief other than the payment of money) except as may be required by applicable rules of procedure to enforce against the Estate and the Lessee (rather than against the Owner Trustees personally), by appropriate proceedings against the Owner Trustees at law or in equity or otherwise, the obligation to make the payments to be made pursuant to this section 6.1 or any other payments or performance obligations due to the Trustee under this Agreement. Nothing contained herein limiting the liability of the Owner Trustees shall derogate from the right of the Trustee to proceed against the Estate or the Lessee as provided for herein or in the Lease or for the full unpaid principal amount of the Certificates and interest thereon.

SECTION 6.3. Representations and Warranties. The Owner Trustees hereby represent and warrant that:

(a) The Corporate Trustee is a national banking association duly organized and validly existing in good standing under the laws of the United States and has under the laws of the State of Utah and Federal banking law the corporate power and authority to enter into and perform its obligations under the Trust Agreement and, acting as trustee thereunder, under this Agreement, the Lease and the Lease Assignment.

(b) The Trust Agreement has been duly executed and delivered by the Individual Trustee and by one of the officers of the Corporate Trustee who is duly authorized to execute and deliver the Trust Agreement on behalf of the Corporate Trustee and, assuming due authorization, execution and delivery by the Beneficial Owners, is a legal, valid and binding obligation, and the trust created thereby creates under the laws of the State of Utah for the Beneficial Owners the beneficial interest in the Trust Estate it purports to create.

(c) This Agreement, the Lease and the Lease Assignment have been duly authorized, executed and delivered by or on behalf of the Owner Trustees, acting pursuant to the Trust Agreement, and, assuming due authorization, execution and delivery by the other parties thereto, are under the laws of the State of Utah and Federal banking law legal, valid and binding obligations of the Owner Trustees, enforceable in accordance with their respective terms.

(d) The execution and delivery by the Corporate Trustee of the Trust Agreement, this Agreement, the Lease and the Lease Assignment are not, and the performance by the Corporate Trustee of its obligations under each will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it under Federal banking law or the laws of the State of Utah, or any subdivision or agency thereof, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or under Federal banking law or the laws of the State of Utah, or any subdivision or agency thereof, by, any Federal, state or local governmental authority or agency, except such as have been obtained, given or accomplished.

(e) Each unit of Equipment, when delivered to the Owner Trustees by the manufacturer or seller thereof, will be free of liens resulting from claims against the Owner Trustees other than liens created or granted by the Owner Trustees by this Agreement and the rights of the Lessee under the Lease.

SECTION 6.4. Further Assurances. The Owner Trustees covenant and agree from time to time to do all such acts and execute all such instruments of further assurance as they shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE VII

### EVENTS OF DEFAULT; REMEDIES

SECTION 7.1. Events of Default. The Owner Trustees covenant and agree that in case any of the following events (each such event being herein sometimes called an Event of Default) shall have occurred (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any default or breach of obligation by the Lessee shall have occurred under the Lease; or

(b) the Owner Trustees shall fail to make any payment hereunder when the same shall become due, and such failure shall continue for more than ten days thereafter, without regard for any limitation of liability contained herein; or

(c) the Owner Trustees or any Beneficial Owner shall breach or fail to observe or perform any covenant, agreement or warranty on its respective part made in this Agreement, the Participation Agreement, the Trust Agreement, the Lease or the Lease Assignment without regard for any limitation of liability contained herein, and such breach or failure shall continue for a period of 30 days after notice thereof shall have been given to the Beneficial Owner, the Lessee and the Owner Trustees by the Trustee, or to the Beneficial Owner, the Lessee, the Owner Trustees and the Trustee by a Directive of the registered owners of



the Certificates, specifying such failure and requiring it to be remedied; or

(d) any representation or warranty made or given by the Owner Trustees or any Beneficial Owner herein, in the Trust Agreement, in the Participation Agreement or in any document, certificate or instrument furnished in connection therewith shall prove to be inaccurate in any material respect; or

(e) any proceeding shall be commenced by or against any Beneficial Owner for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder or under the Trust Agreement or the Participation Agreement, as the case may be) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of such Beneficial Owner under the Trust Agreement and/or the Participation Agreement, as the case may be, shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for such Beneficial Owner, or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; unless the obligations of such Beneficial Owner under the Trust Agreement shall have been assumed or guaranteed by the other Beneficial Owner in a manner satisfactory to the Trustee;

then and in every such case the Trustee may, and upon receipt of a Directive of the registered owners of the Certificates shall, by notice in writing to the Owner Trustees, declare the unpaid principal amount of the Certificates with accrued interest thereon to be due and payable. Thereupon the entire amount of such principal and accrued interest, and the entire amount due hereunder shall become due and payable immediately without further demand, together with interest at the Overdue Rate, to the extent legally enforceable, on any portion thereof overdue.

The Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the amounts so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Owner Trustees and collect in the manner provided by law out of the Estate, wherever situated, the moneys adjudged or decreed to be payable (subject to the provisions of section 6.2 hereof).

SECTION 7.2. Specific Remedies. Upon the occurrence and during the continuance of a Event of Default the Trustee may exercise any or all of the following additional remedies:

(a) If the Lessee shall be in default under the Lease, the Trustee may exercise any if the remedies available to the Owner Trustees as lessor thereunder.

(b) Subject to the rights of the Lessee under the Lease (if the Lease shall not then be in default), the Trustee may recover possession of the Equipment and the Estate. If requested by the Trustee, the Owner Trustees shall cause the Equipment and the Estate to be assembled and delivered to the location specified by the Trustee. The Trustee shall be entitled to a judgment conferring upon the Trustee the immediate right to such possession and to a decree of specific performance requiring the delivery of the Equipment and the Estate as aforesaid.

(c) The Trustee may collect and receive any and all rents, revenues and other cash and non-cash proceeds from the Equipment and the Estate.

(d) The Trustee may with or without retaking possession sell all or any part of the Estate, free from any and all claims of the Owner-Trustees, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion. Upon any such public sale, the Trustee itself or any holder of Certificates may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Equipment or the Estate to be sold, and in general in such manner as the Trustee may determine; provided, however, that any sale is held in a commercially reasonable manner and the Owner Trustees have received ten days' notice by telegram or

registered mail of and have a reasonable opportunity to bid at any such sale.

If, prior to such sale or lease or the making of a contract therefor, or within 30 days after the Trustee shall have notified the Owner Trustees of its intention to take possession or sell the Equipment, the Owner Trustees should tender full payment of the total unpaid principal of all the Certificates then outstanding, together with interest thereon accrued and unpaid and all other amounts due under this Agreement as well as all proper expenses of the Trustee incurred in taking possession of, storing, preparing the Equipment for, and otherwise arranging for, the sale or leasing of the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner Trustees.

Upon such taking possession or sale of the Estate, the Owner Trustees shall cease to have any rights in respect of the Estate hereunder, but all such rights shall be deemed thenceforth to have been waived and surrendered by the Owner Trustees, and no payments theretofore made by the Owner Trustees in respect of the Estate or any of it shall give to the Owner Trustees any legal or equitable interest or title in or to the Estate or any of it or any cause or right of action at law or in equity in respect of the Estate against the Trustee or the holders of the outstanding Certificates. No such taking possession or sale of the Estate or any of it by the Trustee shall be a bar to the recovery by the Trustee from the Owner Trustees of payments then or thereafter due and payable, and the Owner Trustees (subject to the provisions of section 6.2 hereof) shall be and remain liable for the same until such sums shall have been received by the Trustee as, with the proceeds of the sale of the Estate, shall be sufficient for the discharge and payment in full of all the obligations of the Owner Trustees hereunder (other than interest not then accrued), whether or not they shall have then matured.

In the event that the Trustees shall recover the Equipment and the Estate in its entirety, and shall not the sell the same as aforesaid, the Owner Trustees shall be discharged from their liability hereunder.

SECTION 7.3. Application of Proceeds. If an Event of Default shall occur and be continuing and the Trustee shall exercise any of the powers conferred upon it by Sections 7.1 and 7.2 hereof, all payments made by the Owner Trustees to the Trustee hereunder after such Event of Default, and the proceeds of any judgement collected hereunder from the Owner Trustees by the Trustee, and the proceeds of every sale by the Trustee of any of the Estate, together with any other sums which may then be held by the Trustee under any of the provisions hereof, shall be applied by the Trustee to the

payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in discharge of its duties hereunder, (b) of the interest then due, and (c) of the principal of all the outstanding Certificates, with interest thereon at the Overdue Rate to the extent legally enforceable from the last preceding interest payment date, whether such Certificates shall have then matured by their terms or not.

If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Owner Trustees (subject to the provisions of the Section 6.2 hereof) agree to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Owner Trustees.

SECTION 7.4. Enforcement of Claims Without Possession of Certificates. All rights of action and rights to assert claims under this Agreement, or under any of the Certificates, may be enforced by the Trustee without the possession of such Certificates on any trial or other proceedings instituted by the Trustee, and any such trial or other proceedings shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the registered owners of the Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the registered owners of the Certificates, and it shall not be necessary to make any registered owners of the Certificates parties to such proceedings.

SECTION 7.5. Rights and Remedies Cumulative; No Waiver. Each and every right, power and remedy herein specifically given to the Trustee under this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of any Beneficial Owner, the Owner Trustees or the Lessee or to be an acquiescence therein. No waiver in respect of any Event of Default shall extend to any subsequent or other Event of Default.

SECTION 7.6. Restoration of Rights and Remedies. In case the Trustee shall have proceeded to enforce any right, power or remedy under this Agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case each Beneficial Owner, the Owner Trustees, the Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

SECTION 7.7. Rescission and Annulment. If at any time after the principal of the Certificates shall have become so due and payable by declaration by the Trustee, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all arrears of interest upon the Certificates and all other sums payable under the Certificates (except the principal of and premium, if any, on the Certificates which by such declaration shall have become payable) shall have been duly paid, and every other Default and Event of Default with respect to any covenant or provision of this Agreement shall have been made good or cured, then and in every such case the Trustee's declaration and its consequences may, by Directive of the registered owners of the Certificates filed with the Trustee, be rescinded and annulled; but no such rescission or annulment shall extend to or affect any subsequent Default or Event of Default with respect to such series or impair any right consequent thereon.

SECTION 7.8. Owner Trustees May Purchase Certificates. At any time after the Trustee has declared the principal of the Certificates with accrued interest thereon to be due and payable (unless such declaration has been rescinded), upon the written request of the Owner Trustees addressed to all registered owners of Certificates, each such registered owner agrees that it will, upon receipt from the Owner Trustees of an amount equal to the aggregate unpaid principal amount of all Certificates then held by such registered owner, together with premium, if any, and interest thereon to the date of payment, plus all other sums then due and payable to such registered owner hereunder or under such Lease or under the Certificates, forthwith sell, assign, transfer and convey to the Owner Trustees (without recourse or warranty of any kind) all of the right, title and interest of such registered owner in and to the Estate, this Agreement and all Certificates held by such registered owner, and the Owner Trustees shall assume all obligations of such registered owner under this Agreement. If the Owner Trustees shall so request, such registered owner will comply with all the provisions of Article IV to enable new Certificates of the same series to be issued to the Owner Trustees in such denominations as the Owner Trustees shall request. All charges and expenses in connection with

such transfer and the issuance of any such new Certificates shall be borne by the Owner Trustees.

## ARTICLE VIII

### CONCERNING THE TRUSTEE

SECTION 8.1. Acceptance of Trusts; Standard of Care. The Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Agreement and agrees to receive and disburse in accordance with Articles III and VI all monies constituting part of the Estate. The Trustee shall not be answerable or accountable under any circumstances, except for its own willful misconduct or gross negligence.

SECTION 8.2. Duties in Respect of Event of Default. In the event the Trustee shall have actual knowledge of a Event of Default or of a Default, the Trustee shall give prompt written notice thereof to the Lessee, each Beneficial Owner, the Owner Trustees and each registered owner of a Certificate unless such Event of Default or Default shall have been remedied before the giving of such notice. Subject to the provisions of section 8.3, the Trustee shall take such action, or refrain from taking such action, with respect to such Event of Default or Default as the Trustee shall be instructed by a Directive of the registered owners of outstanding Certificates. If the Trustee shall not have received instructions as above provided within 20 days after mailing of notice of such Event of Default or Default to the registered owners of the Certificates, the Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Event of Default or Default as it shall deem advisable in the best interests of the registered owners of the Certificates. For all purposes of this Agreement, in the absence of actual knowledge, the Trustee shall not be deemed to have knowledge of a Event of Default or Default except the failure of the Lessee to pay any installment of rent when the same shall become due.

SECTION 8.3. Indemnification. The Trustee shall not be required to take or refrain from taking for the benefit of the registered owners of the Certificates any action under section 8.1 or 8.2 or Article VII (except the giving of the written notice declaring the Lease to be in default pursuant to the terms thereof) unless the Trustee shall have been indemnified by such registered owners, in manner and form satisfactory to the Trustee, against any liability, cost or expense (including counsel fees) which may be incurred in connection therewith. The Trustee shall not be required to take any

action under section 8.1 or 8.2 or Article VII nor shall any other provision of this Agreement be deemed to impose a duty on the Trustee to take any action, if the Trustee shall have been advised by counsel that such action is contrary to the terms hereof or of the Lease or is otherwise contrary to law.

SECTION 8.4. Limitations on Duties. The Trustee shall not have any duty or obligation to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Equipment or any other part of the Estate or otherwise to take or refrain from taking any action under, or in connection with, this Agreement or the Lease or any other document or any other action with respect to such Equipment except as expressly provided by the terms of this Agreement or as expressly provided in a Directive of the registered owners of Certificates pursuant to section 8.1 or 8.2 and no implied duties or obligations shall be read into this Agreement against the Trustee.

SECTION 8.5. Restrictions on Dealing with Estate. The Trustee agrees not to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Equipment or any other part of the Estate except (i) as required by the terms of the Lease, (ii) in accordance with the powers granted to, or the authority conferred upon, the Trustee pursuant to this Agreement, or (iii) in accordance with the express terms hereof or a Directive of the registered owners of the Certificates pursuant to section 8.1 or 8.2.

SECTION 8.6. No Warranties. The Trustee makes no representation or warranty as to the value, condition, merchantability or fitness for use of the Equipment or any other part of the Estate or as to its title thereto, or any other representation or warranty with respect to the Equipment or any other part of the Estate whatsoever.

SECTION 8.7. Non-Segregation of Monies. All monies received by the Trustee under or pursuant to any of the provisions of this Agreement need not be segregated in any manner from any other monies except to the extent required by law and may be deposited under such conditions as may be prescribed or permitted by law, and the Trustee shall not be liable for any interest thereon, provided, however, that any payments received or applied hereunder by the Trustee shall be accounted for by the Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

SECTION 8.8. Trustee to Act Solely as Trustee. The Trustee acts hereunder solely as trustee as herein and not in any individual capacity; and all persons having any claim against the Trustee arising from matters relating to the Certificates by reason of the transactions contemplated hereby shall, subject to the lien and priorities of payment as herein provided look only to the Estate for payment or satisfaction thereof.

## ARTICLE IX

### CO-TRUSTEES; SEPARATE TRUSTEES; AND SUCCESSOR TRUSTEES

SECTION 9.1. Appointment of Co-Trustees or Separate Trustees. At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Estate may at the time be located, the Trustee shall have power to appoint one or more individuals, corporations, associations or trusts to act as co-trustee of all or any part of such Estate or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such co-trustee or separate trustee any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this section.

Every separate trustee or co-trustee shall, to the extent permitted by law, be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall not be greater than those conferred or imposed upon the Trustee, and such rights and powers shall be exercisable only jointly with the Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of subsection (4) of this section.

(2) The Trustee may at any time, by an instrument in writing executed by it, accept the resignation of or remove any separate trustee or co-trustee appointed under this section.

(3) No trustee or co-trustee under this Agreement shall be liable by reason of any act or omission of any other trustee or co-trustee under this Agreement.

(4) No power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Trustee, anything herein contained to the contrary notwithstanding.



Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, it shall be vested with the estates or property specified in the instrument of appointment, subject to all the terms of this Agreement.

SECTION 9.2. Resignation and Removal of Trustee; Appointment of Successor. The Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Trustees and to each registered owner of a Certificate, such resignation to be effective on the date of appointment of a successor trustee as hereinafter provided. In addition, the Trustee may be removed at any time without cause by a Directive of holders of the Certificates delivered to the Trustee, and the Trustee shall promptly give notice thereof in writing to each registered owner of a Certificate. In the case of the resignation or removal of the Trustee, a successor trustee may be appointed by a Directive of the holders of the Certificates. If a successor trustee shall not have been appointed within 30 days after such notice of resignation or removal, the Trustee the Owner Trustees or any registered owner of a Certificate may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. Any successor so appointed by such court shall immediately and without further act be superseded by any successor thereafter appointed as above provided within one year from the date of the appointment by such court.

Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner Trustees an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of its predecessor hereunder in the trusts under this Agreement applicable to it with like effect as if originally named as the Trustee herein; but nevertheless upon the written request of such successor trustee its predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers and trusts of such predecessor under this Agreement, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee any property or monies then held by such predecessor under this Agreement.

Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least \$25,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Trustee hereunder upon reasonable or customary terms.

Any corporation or national banking association into which the Trustee may be merged or converted or with which it may be

consolidated, or any corporation or national banking association resulting from or surviving any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee may be transferred, shall, subject to the terms of the next preceding paragraph, be the Trustee under this Agreement without further act.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.1. Owner Trustees' Liability. First Security Bank of Utah, National Association, and Thomas C. Cuthbert are entering into this Agreement solely as trustees under the Trust Agreement and not in their individual capacities and in no case whatsoever shall First Security Bank of Utah, National Association, or Thomas C. Cuthbert (or any person or entity acting as a trustee under the Trust Agreement) be personally liable for, or for any loss in respect of, any of the statements, warranties, representations, agreements or obligations of the Owner Trustees hereunder except for the willful misconduct or gross negligence of such person and except for statements, warranties, representations, agreements or obligations expressly made by him or it in his or its individual capacity.

SECTION 10.2. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing and shall become effective when deposited in the United States mail with proper postage for first-class mail, prepaid, addressed as follows:

(i) if to a Beneficial Owner, at its address set forth in the Participation Agreement,

(ii) if to the Owner Trustees, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Division, Corporate Trust Department,

(iii) if to the Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division,

(iv) if to the Lessee, at its address set forth in the Lease, and

(v) if to any registered owner of a Certificate of such series, at the address of such

registered owner set forth in the register kept pursuant to section 4.1;

or to such other address as any Beneficial Owner, the Owner Trustees, the Trustee or the Lessee, or its successors or assigns, may from time to time designate by notice duly given in accordance with this section to each other party.

SECTION 10.3. Law Governing; Severability. This Agreement shall be governed by the laws of the State of New York and of the United States. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.4. Benefit of Parties, Successors and Assigns. All representations, warranties, covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee and its successors and assigns and each registered owner of a Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any registered owner of a Certificate shall bind the successors and assigns of such registered owner.

SECTION 10.5. Survival of Representations and Warranties. All representations and warranties shall survive the execution and delivery of this Agreement and the issue, sale and delivery of any Certificates and shall continue in effect so long as any Certificate of such series issued hereunder is outstanding and unpaid.

SECTION 10.6. Counterpart Execution. This instrument and any amendment or supplement to this instrument may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 10.7. Dating of Agreement. Although this instrument is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the Owner Trustees and the Trustee are the respective dates set forth under their signatures, and this instrument shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the Individual Trustee has executed this instrument, and the Corporate Trustee and the Trustee have each caused this instrument to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION and THOMAS C. CUTHBERT, not in their individual capacities, but solely as trustees under a Trust Agreement dated as of the date hereof among them and Crocker National Bank and First Security Bank of Utah, National Association,

by FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, not in its individual capacity but solely as Corporate Trustee and on behalf of the Individual Trustee

by

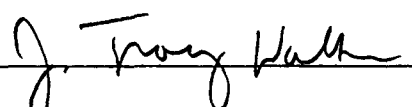
  
Authorized Officer

Date:

10-19-78

[Seal]

Attest:

  
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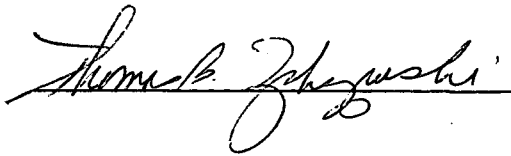
UNITED STATES TRUST COMPANY OF NEW  
YORK,

By   
Assistant Vice President

Date: **OCT 23 1978**

[Seal]

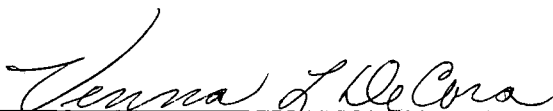
Attest:



*Handwritten text, possibly "C. B. Zehausen"*

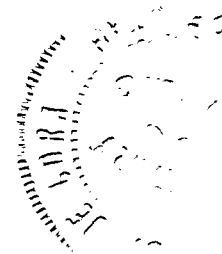
STATE OF UTAH )  
 ) ss.:  
COUNTY OF SALT LAKE)

On this 19th day of October, 1978, before me personally, appeared WILLIAM C. MCGREGOR, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

  
\_\_\_\_\_  
Notary Public

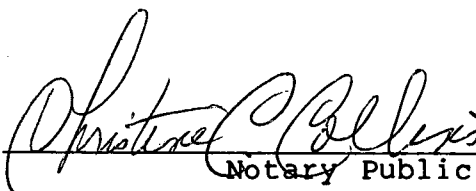
[NOTARIAL SEAL]

My Commission expires  
My Commission Expires November 15, 1981



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 23 day of October, 1978, before me personally appeared GEORGE BOSWELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

CHRISTINE C. COLLINS  
Notary Public, State of New York  
No. 31-4624735  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires March 30, 1980

## ANNEX A

<u>Quantity</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Identifying Number</u>
10	2,300 hp. diesel-electric locomotive, model GP-39-2	General Motors Corporation (Electro-Motive Division)	790 through 799
5	1,500 hp. diesel-electric locomotive, model MP15-AC	General Motors Corporation (Electro-Motive Division)	120,121, 122,701, 704
7	3,000 hp. diesel-electric locomotive, model SD 40-2	General Motors Corporation (Electro-Motive Division)	101 through 107

ANNEX B

THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MUST BE HELD INDEFINITELY UNLESS SO REGISTERED OR TRANSFERRED IN A TRANSACTION EXEMPT FROM REGISTRATION.

No.

\$

EQUIPMENT TRUST NO. 2 OF 1978  
SECURED BY LEASE OBLIGATIONS OF  
KENNECOTT COPPER CORPORATION

UNITED STATES TRUST COMPANY OF NEW YORK  
not in its individual capacity,  
but solely as trustee under an Equipment  
Trust Agreement dated  
as of September 1, 1978

9.75% EQUIPMENT TRUST CERTIFICATE DUE 1994

Maximum Authorized Issue  
\$8,670,000

UNITED STATES TRUST COMPANY OF NEW YORK (hereinafter called the Trustee), not in its individual capacity, but solely as trustee under an Equipment Trust Agreement dated as of September 1, 1978, as it may be amended and supplemented from time to time (the Equipment Trust Agreement, as so amended and supplemented, herein called the Agreement), with First Security Bank of Utah, National Association, and Thomas C. Cuthbert (hereinafter called the Owner Trustees) not in their individual capacities but solely as trustees under a Trust Agreement dated as of September 1, 1978, with Crocker National Bank and First Security Bank of Utah, National Association, hereby certifies that

is entitled to an interest in the principal amount of \$ in installments as hereinafter provided, and interest (computed on the basis of a year of twelve months of 30 days each) on the unpaid principal balance thereof at a rate per annum equal to 120% of the interest rate charged by Bank of Montreal (California) to its prime large commercial customers on short-term unsecured borrowings from time to time in effect, from the date of this Certificate to January 15, 1979, and thereafter at the rate of 9.75% per annum to the date payment in full of the principal amount of this Certificate is made. Interest only shall be payable on January 15, 1979. Principal and interest payments shall be made in



installments on January 15, April 15, July 15 and October 15 in each year commencing April 15, 1979, and ending January 15, 1994. The amount of each such installment shall bear the same proportion to the amount of each installment set forth on the schedule attached hereto as the principal amount hereof bears to \$1,000,000, subject to adjustment as provided in the Agreement.

This Certificate shall bear interest, payable only from the funds designated below, at the rate of 10.75% per annum on any part of the principal hereof not paid when due for any period during which the same shall be overdue.

All payments of principal, premium, if any, and interest to be made by the Trustee on this Certificate shall be made only from the income or proceeds from the Estate (as defined in the Agreement) and the registered owner or other holder hereof, by its acceptance of this Certificate, agrees that, except as provided above, it will look solely to the income and proceeds from such Estate to the extent available for distribution to the registered owner hereof as above provided and that neither the Owner Trustees nor the Trustee shall be personally liable to the registered owner or other holder hereof for any amounts payable under the Agreement or under this Certificate or, except as provided in Article VI and section 8.1 of the Agreement, for any liability under the Agreement.

Unless other arrangements for payment are made in accordance with section 3.4 of the Agreement, principal, premium, if any, and interest shall be payable in immediately available funds at the Principal Office of the Trustee (as defined in the Agreement).

This Certificate is transferable by the registered owner hereof, or by its attorney duly authorized in writing, only on the register maintained at the Principal Office of the Trustee and only upon surrender and cancellation of this Certificate and compliance with the conditions set forth in the Agreement; and upon such transfer, a new registered Certificate or Certificates of the same series for the same aggregate principal amount will be issued in exchange herefor in accordance with the terms and provisions of the Agreement.

This Certificate is one of the Certificates of the series created by the Agreement which have been or are to be issued by the Trustee pursuant to the terms thereof. The Estate is held by the Trustee as security for such Certificates. Reference is hereby made to the Agreement for a statement of the rights of the registered owners or other holders of, and the nature and extent of the security for, this Certificate and the other Certificates of the same series as well as for a statement of the terms and conditions of the trusts created by the Agreement, to all of which terms and conditions each

registered owner or other holder hereof agrees by its acceptance of this Certificate.

This Certificate is not subject to prepayment except upon the occurrence of certain events as provided in Article V of the Agreement.

In case an Event of Default under the Agreement (as defined in the Agreement) shall occur and be continuing, the unpaid principal of this Certificate together with accrued interest hereon may become or be declared due and payable in the manner, with the effect and subject to the conditions, provided in the Agreement.

This Certificate shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed by one of its officers thereunto duly authorized, as of the date hereof.

Dated:

UNITED STATES TRUST COMPANY OF NEW  
YORK, not in its individual  
capacity, but solely as Trustee  
under an Equipment Trust Agreement  
dated as of September 1, 1978,

By \_\_\_\_\_  
Vice President

This is one of the Certificates of the series created by the within-mentioned Agreement.

UNITED STATES TRUST COMPANY OF NEW  
YORK,  
as Trustee

By \_\_\_\_\_  
Assistant Vice President

DATE	PRINCIPAL	INTEREST ( 9.7500001)	PRINCIPAL RECOVERY	PAYMENT
1/15/79	\$1,000,000.00			
6/15/79	988,309.75	\$24,375.00	\$11,690.25	\$36,065.25
7/15/79	976,334.55	24,090.05	11,975.20	36,065.25
10/15/79	964,067.45	23,798.15	12,267.10	36,065.25
1/15/80	951,501.34	23,499.14	12,566.11	36,065.25
4/15/80	938,628.94	23,192.85	12,872.40	36,065.25
7/15/80	925,442.77	22,679.88	13,186.17	36,065.25
10/15/80	911,935.19	22,557.67	13,507.58	36,065.25
1/15/81	898,098.36	22,228.42	13,836.83	36,065.25
4/15/81	883,924.26	21,891.15	14,174.10	36,065.25
7/15/81	869,404.66	21,545.65	14,519.60	36,065.25
10/15/81	854,531.15	21,191.74	14,873.51	36,065.25
1/15/82	839,295.10	20,829.20	15,236.05	36,065.25
4/15/82	823,687.67	20,457.82	15,607.43	36,065.25
7/15/82	807,699.81	20,077.39	15,987.86	36,065.25
10/15/82	791,322.24	19,687.68	16,377.57	36,065.25
1/15/83	774,545.47	19,288.48	16,776.77	36,065.25
4/15/83	757,359.77	18,879.55	17,185.70	36,065.25
7/15/83	739,755.16	18,460.64	17,604.61	36,065.25
10/15/83	721,721.44	18,031.53	18,033.72	36,065.25
1/15/84	703,248.15	17,591.96	18,473.29	36,065.25
4/15/84	684,324.57	17,141.67	18,923.58	36,065.25
7/15/84	664,939.73	16,680.41	19,384.84	36,065.25
10/15/84	645,082.39	16,207.91	19,857.34	36,065.25
1/15/85	624,741.02	15,723.88	20,341.37	36,065.25
4/15/85	610,458.61	15,228.06	14,282.41	29,510.47
7/15/85	595,828.07	14,879.93	14,630.54	29,510.47
10/15/85	580,840.91	14,523.31	14,987.16	29,510.47
1/15/86	565,488.44	14,158.00	15,352.47	29,510.47
4/15/86	549,761.75	13,783.78	15,726.69	29,510.47
7/15/86	533,651.72	13,400.44	16,110.03	29,510.47
10/15/86	517,149.01	13,007.76	16,502.71	29,510.47
1/15/87	500,244.05	12,605.51	16,904.96	29,510.47
4/15/87	482,927.03	12,193.45	17,317.02	29,510.47
7/15/87	465,187.91	11,771.35	17,739.12	29,510.47
10/15/87	447,016.40	11,338.96	18,171.51	29,510.47
1/15/88	428,401.95	10,896.02	18,614.45	29,510.47
4/15/88	409,333.72	10,442.30	19,068.17	29,510.47
7/15/88	389,800.82	9,977.51	19,532.96	29,510.47
10/15/88	369,791.74	9,501.39	20,009.08	29,510.47
1/15/89	349,294.94	9,013.67	20,496.80	29,510.47
4/15/89	328,298.53	8,514.06	20,996.41	29,510.47
7/15/89	306,790.34	8,002.28	21,508.19	29,510.47
10/15/89	284,757.88	7,478.01	22,032.46	29,510.47
1/15/90	262,188.38	6,940.97	22,569.50	29,510.47
4/15/90	239,068.75	6,390.84	23,119.63	29,510.47

<u>DATE</u>	<u>PRINCIPAL</u>	<u>INTEREST</u> <u>(9.750000I)</u>	<u>PRINCIPAL</u> <u>RECOVERY</u>	<u>PAYMENT</u>
7/15/90	215,385.58	5,827.30	23,663.17	29,510.47
10/15/90	191,125.13	5,250.02	24,260.45	29,510.47
1/15/91	166,273.34	4,658.68	24,851.79	29,510.47
4/15/91	153,931.22	4,052.91	12,342.12	16,395.03
7/15/91	141,288.26	3,752.07	12,642.96	16,395.03
10/15/91	128,337.13	3,443.90	12,951.13	16,395.03
1/15/92	115,070.32	3,128.22	13,266.81	16,395.03
4/15/92	101,480.13	2,804.54	13,590.19	16,395.03
7/15/92	87,558.88	2,473.58	13,921.45	16,395.03
10/15/92	73,297.89	2,134.24	14,264.19	16,395.03
1/15/93	58,689.58	1,786.64	14,608.39	16,395.03
4/15/93	43,725.03	1,430.56	14,964.47	16,395.03
7/15/93	28,395.88	1,065.80	15,329.23	16,395.03
10/15/93	12,692.92	692.15	15,702.88	16,395.03
1/15/94	.00	309.39	12,692.92	13,002.31